

EXHIBIT 8

Condensed Transcript

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

**IAN J. BROWN, JAMES BROWN
AND BARBARA BROWN,**

Plaintiffs,

VS

CIVIL ACTION NUMBER 04-11924-RGS

**UNITED STATES OF AMERICA,
VERIZON NEW ENGLAND, INC. AND
BOSTON EDISON COMPANY
D/B/A NSTAR ELECTRIC,**

Defendants.

DEPOSITION OF

IAN JAMES BROWN

**July 7, 2006
9:40 a.m.**

**Prince, Lobel, Glovsky & Tye, LLP
100 Cambridge Street, Suite 2200
Boston, Massachusetts**

**Laurie J. Driggers, Notary Public, Certified Shorthand Reporter,
Realtime Professional Reporter and Certified Realtime Reporter,
within and for the Commonwealth of Massachusetts.**



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Ian James Brown

July 7, 2006

<p style="text-align: center;">5</p> <p>1 comfortable.</p> <p>2 Q. All right. That would be fine with</p> <p>3 me.</p> <p>4 Ian, my name is Bill Worth and I</p> <p>5 represent Verizon New England in the</p> <p>6 lawsuit you've -- you've brought against</p> <p>7 Verizon and the United States of America</p> <p>8 and -- and NSTAR.</p> <p>9 Before I begin asking you</p> <p>10 questions, I just want to say for the</p> <p>11 record that Mr. Wilmot, who represents the</p> <p>12 United States of America, will be</p> <p>13 attending this deposition and has given us</p> <p>14 the go-ahead to start without him; he'll</p> <p>15 be delayed slightly in arriving this</p> <p>16 morning.</p> <p>17 And in addition, at some point in</p> <p>18 this deposition Joshua Lewin, who is also</p> <p>19 counsel of record for Verizon, will take</p> <p>20 over as Verizon's attorney, probably in</p> <p>21 the middle of this session where Verizon</p> <p>22 is asking questions of -- of the witness.</p> <p>23 And I understand there's no objection to</p> <p>24 that on the part of other counsel.</p>	<p style="text-align: center;">7</p> <p>1 A. Sir, my name is Ian James Brown,</p> <p>2 and I live at 223 Cotter, C-O-T-T-E-R,</p> <p>3 Avenue in Neptune, New Jersey. The zip</p> <p>4 code there, 07753.</p> <p>5 Q. Do you have a social security</p> <p>6 number?</p> <p>7 A. Yes, sir.</p> <p>8 Q. And what is that?</p> <p>9 A. Sir, it's 142-78-1083.</p> <p>10 Q. How long have you resided at 223</p> <p>11 Cotter Avenue, Neptune, New Jersey?</p> <p>12 A. Sir, I've lived there since I was</p> <p>13 released from the hospital following my</p> <p>14 rehabilitation in 2002.</p> <p>15 Q. And did you live there at any time</p> <p>16 prior to your hospitalization?</p> <p>17 A. No, sir.</p> <p>18 Q. Who lives there with you?</p> <p>19 A. Sir, my parents.</p> <p>20 Q. Okay. And what are their names?</p> <p>21 A. My father's name is James E. Brown.</p> <p>22 Q. Mm-hmm.</p> <p>23 A. And my mother's name is Barbara B.</p> <p>24 Brown.</p>
<p style="text-align: center;">6</p> <p>1 Now, Ian, we spoke a little bit</p> <p>2 before we started the deposition about</p> <p>3 deposition practice in terms of how to</p> <p>4 answer questions when a court reporter is</p> <p>5 transcribing the events of this morning or</p> <p>6 taking down our testimony rather than</p> <p>7 transcribing. In addition, I want you to</p> <p>8 answer questions that I pose to you only</p> <p>9 from your best memory. I don't want you</p> <p>10 to guess. And I want you only to answer</p> <p>11 those questions that you understand. I</p> <p>12 will assume if you've answered a question,</p> <p>13 that you understood it.</p> <p>14 If you don't understand the</p> <p>15 question, please let me know, and I will</p> <p>16 attempt to rephrase it. You understand</p> <p>17 everything I've said so far?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Okay. Now, are you taking any</p> <p>20 medications that might impair your ability</p> <p>21 to understand questions?</p> <p>22 A. No, sir.</p> <p>23 Q. Why don't you give me your full</p> <p>24 name and residential address?</p>	<p style="text-align: center;">8</p> <p>1 Q. What's your dad's age?</p> <p>2 A. Sir, he's 56.</p> <p>3 Q. Okay. And your mom's age?</p> <p>4 A. Fifty-two.</p> <p>5 Q. And what's your age?</p> <p>6 A. Sir, I'm 29.</p> <p>7 Q. What's your date of birth?</p> <p>8 A. Sir, I was born March 22nd, 1977.</p> <p>9 Q. You have brothers and sisters?</p> <p>10 A. Yes, sir.</p> <p>11 Q. And who are they and where do they</p> <p>12 live?</p> <p>13 A. Sir, I have one sister, and she</p> <p>14 lives 15 miles south of me in Brick, New</p> <p>15 Jersey.</p> <p>16 Q. How -- and what is her name and</p> <p>17 age?</p> <p>18 A. Sir, she is 30 years old, and her</p> <p>19 name is Jill Edwards, E-D-W-A-R-D-S.</p> <p>20 Q. Okay. Now, you're letting me call</p> <p>21 you Ian, and I appreciate the courtesy of</p> <p>22 your calling me sir, but I'm -- you don't</p> <p>23 have to call me sir, especially before</p> <p>24 every -- question or after every question,</p>



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Ian James Brown

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<p style="text-align: center;">153</p> <p>1 Q. Okay. Do you remember being in the</p> <p>2 hospital on January 4th?</p> <p>3 A. No, sir.</p> <p>4 Q. Okay. And do you remember being</p> <p>5 transported to the hospital from Bedford?</p> <p>6 A. No, sir.</p> <p>7 Q. What is the last event you recall</p> <p>8 on the day of January 4th, 2002?</p> <p>9 A. Hitting the telephone pole, sir.</p> <p>10 Q. Okay. Now, when you say "hitting</p> <p>11 the telephone pole," can you describe for</p> <p>12 me what you remember?</p> <p>13 A. Sir, it's a broad question. I</p> <p>14 don't know exactly what aspect that you're</p> <p>15 looking at.</p> <p>16 Q. Well, you said the last thing you</p> <p>17 remember is hitting the telephone pole.</p> <p>18 Can you describe for me what you remember</p> <p>19 about hitting the telephone pole?</p> <p>20 A. Sir, I remember heading toward the</p> <p>21 telephone pole. My field of vision wasn't</p> <p>22 on it. And I just remember contacting</p> <p>23 what would've been the pole, based on my</p> <p>24 position.</p>	<p style="text-align: center;">155</p> <p>1 A. Sir, normal work time in the</p> <p>2 morning.</p> <p>3 Q. Which is about?</p> <p>4 A. Sir, it's about 8:00 --</p> <p>5 Q. Okay.</p> <p>6 A. -- is when work starts, but I</p> <p>7 normally go in early.</p> <p>8 Q. About how early?</p> <p>9 A. Sir, I would go and work out for</p> <p>10 an hour or two before work.</p> <p>11 Q. And do you recall doing that on</p> <p>12 January 4th?</p> <p>13 A. Yes, sir.</p> <p>14 Q. And at some point did you leave</p> <p>15 work -- by the way, when you say work,</p> <p>16 where was your work at Hanscom?</p> <p>17 A. Sir, it was on base at the ESC</p> <p>18 building.</p> <p>19 Q. And about how long would it take</p> <p>20 you to get from your home to work at the</p> <p>21 ESC building?</p> <p>22 A. Sir, only a couple of minutes.</p> <p>23 Q. Can you clarify "a couple"?</p> <p>24 A. Yes, sir. Maybe ten.</p>
<p style="text-align: center;">154</p> <p>1 Q. What part of your body hit the</p> <p>2 telephone pole?</p> <p>3 A. My head.</p> <p>4 Q. And do you remember feeling your</p> <p>5 head hit the telephone pole?</p> <p>6 A. No, sir. And also you didn't let</p> <p>7 me finish the -- what I felt I hit the</p> <p>8 telephone pole. I -- I -- there may have</p> <p>9 been other parts of my body that hit it.</p> <p>10 I just remember stopping and I remember</p> <p>11 impacting the pole, but I don't know</p> <p>12 exactly what orientation my body was</p> <p>13 immediately after and immediately at the</p> <p>14 point of impact.</p> <p>15 Q. Okay. Well, let's step back a</p> <p>16 little. Do you remember events of the day</p> <p>17 of January 4th before you got on your</p> <p>18 motorcycle leaving your house to return to</p> <p>19 Hanscom Air Force Base?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Okay. Can you tell me what you</p> <p>22 did on the day of January 4th?</p> <p>23 A. Sir, I went to work.</p> <p>24 Q. At what time?</p>	<p style="text-align: center;">156</p> <p>1 Q. Around ten minutes?</p> <p>2 A. Sir, it could be more or less.</p> <p>3 Q. Okay. Would you say more than</p> <p>4 five?</p> <p>5 A. Sir, it could be more than five.</p> <p>6 Q. What's your best guess about how</p> <p>7 long it took you to get to work?</p> <p>8 MR. CHARNAS: Objection.</p> <p>9 Q. From your residence?</p> <p>10 A. Sir, I could only give a best-faith</p> <p>11 estimate.</p> <p>12 Q. What's your best-faith estimate?</p> <p>13 A. My best-faith estimate would be</p> <p>14 about five to ten minutes.</p> <p>15 Q. All right. And on the day of</p> <p>16 January 4th, did you ride your motorcycle</p> <p>17 to work that morning?</p> <p>18 A. No, sir.</p> <p>19 Q. Okay. How did you get to work?</p> <p>20 A. Sir, I drove my pickup truck.</p> <p>21 Q. And at some point did you return</p> <p>22 from work to your residence?</p> <p>23 A. Yes, sir.</p> <p>24 Q. Okay. And about what time was</p>



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<p style="text-align: center;">161</p> <p>1 Q. Can you approximate how often you</p> <p>2 drove your motorcycle to work in the</p> <p>3 wintertime of 2002?</p> <p>4 MR. CHARNAS: You mean</p> <p>5 2001/2002?</p> <p>6 MR. LEWIN: Yes.</p> <p>7 A. Sir, can you repeat the question?</p> <p>8 Q. Sure. Could you tell me how</p> <p>9 frequently you drove your motorcycle to</p> <p>10 work versus your pickup truck?</p> <p>11 A. During the winter months?</p> <p>12 Q. Yes. Of 2001 and 2002.</p> <p>13 A. I could give you an estimate. At</p> <p>14 best, once a week.</p> <p>15 Q. Okay. And would that be one day</p> <p>16 per week or --</p> <p>17 A. Sir, one day per week. Sir, the</p> <p>18 winter of 2001 started in the late</p> <p>19 December and we had a break and I -- my</p> <p>20 accident was in -- on January 4th, so time</p> <p>21 wise there was not much time in there, so.</p> <p>22 Q. And I apologize if Mr. Worth has</p> <p>23 asked you this question already. But how</p> <p>24 long had you been stationed at Hanscom Air</p>	<p style="text-align: center;">163</p> <p>1 BY MR. LEWIN:</p> <p>2 Q. All right. When you left your</p> <p>3 house at 129 Independence Court to return</p> <p>4 to work on January 4th, can you tell me</p> <p>5 the course of travel that you took to get</p> <p>6 to work?</p> <p>7 A. Sir, I took the main roadway from</p> <p>8 my house to work.</p> <p>9 Q. Okay. And is that Hartwell Road?</p> <p>10 A. Sir, it includes Hartwell Road.</p> <p>11 Q. Okay. And again, I'm referring to</p> <p>12 when you left after lunch right before</p> <p>13 your accident, did you take a right onto</p> <p>14 Hartwell Road from Independence Court; is</p> <p>15 that correct?</p> <p>16 A. Sir, the intersection it's -- it's</p> <p>17 roughly -- going back, yes.</p> <p>18 Q. Okay. And about how far from</p> <p>19 Independence Court to the place at which</p> <p>20 you lost control of the motorcycle would</p> <p>21 you say it was?</p> <p>22 A. Can you repeat that? I missed</p> <p>23 the --</p> <p>24 Q. About how far from the intersection</p>
<p style="text-align: center;">162</p> <p>1 Force Base prior to January of 2002?</p> <p>2 A. Sir, I had been there since the</p> <p>3 summer of 2002, several months at best.</p> <p>4 Q. Summer of 2001?</p> <p>5 A. Correction. Sorry.</p> <p>6 Q. And did you live at 129</p> <p>7 Independence Court the entire time?</p> <p>8 A. No, sir.</p> <p>9 Q. Okay. Where else did you live?</p> <p>10 A. Sir, I lived in Nashua, New</p> <p>11 Hampshire.</p> <p>12 Q. And is that where you moved first</p> <p>13 when you were stationed at Hanscom Air</p> <p>14 Force Base?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Okay. And when did you move from</p> <p>17 Nashua -- Nashua to 129 Independence</p> <p>18 Court?</p> <p>19 MR. CHARNAS: We did cover</p> <p>20 this.</p> <p>21 MR. LEWIN: You did? Okay.</p> <p>22 I apologize.</p> <p>23 MR. CHARNAS: That's okay.</p> <p>24 MR. LEWIN: I apologize.</p>	<p style="text-align: center;">164</p> <p>1 of Independence Court and Hartwell Road to</p> <p>2 the point at which you lost control of</p> <p>3 your motorcycle, what was that distance?</p> <p>4 A. Sir, I could only give an estimate.</p> <p>5 Q. Okay.</p> <p>6 A. I would estimate that it was less</p> <p>7 than a mile.</p> <p>8 Q. Okay. And sitting here today, do</p> <p>9 you have a memory of driving the</p> <p>10 motorcycle at that period from the corner</p> <p>11 of Independence Court and Hartwell Road to</p> <p>12 the spot at which you lost control of the</p> <p>13 motorcycle?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And did you have any trouble</p> <p>16 with the motorcycle during that period?</p> <p>17 A. Sir, the context of the question,</p> <p>18 can you clarify?</p> <p>19 Q. Sure.</p> <p>20 Did the motorcycle appear to you to</p> <p>21 be operating properly at the time?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Okay. There were no trouble that</p> <p>24 you noticed with the tires of the</p>



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<p style="text-align: center;">165</p> <p>1 motorcycle?</p> <p>2 A. Sir, that I noticed? No.</p> <p>3 Q. Okay. Well, have you learned since</p> <p>4 then that there were any problems with the</p> <p>5 tires on the motorcycle?</p> <p>6 A. Sir, I have not.</p> <p>7 Q. Okay. Were you aware of any other</p> <p>8 technical problems with the motorcycle at</p> <p>9 that time?</p> <p>10 A. Sir, I was not aware of any.</p> <p>11 Q. Okay. Have you become aware since</p> <p>12 that time of any problems with the</p> <p>13 motorcycle?</p> <p>14 A. No, sir.</p> <p>15 Q. Now, at some point you lost control</p> <p>16 of the motorcycle; is that right?</p> <p>17 A. Yes, sir.</p> <p>18 Q. And do you remember that?</p> <p>19 A. Yes, sir.</p> <p>20 Q. And since the time of the accident,</p> <p>21 have you always remembered losing control</p> <p>22 of the motorcycle?</p> <p>23 A. Yes, sir.</p> <p>24 Q. Okay. Has your memory changed at</p>	<p style="text-align: center;">167</p> <p>1 about my memory of losing control?</p> <p>2 Q. I just want to know everything you</p> <p>3 can remember about the time at which you</p> <p>4 lost control of the motorcycle.</p> <p>5 A. Sir, when the motorcycle was no</p> <p>6 longer in my control, I remember feeling</p> <p>7 the bike falling out of control and</p> <p>8 pushing off with my feet from the bike to</p> <p>9 turn my back to the approaching guardrail.</p> <p>10 Q. Prior to you feeling that you were</p> <p>11 losing -- you were no longer in control of</p> <p>12 the bike, what caused you to lose control</p> <p>13 of the -- of the motorcycle?</p> <p>14 A. Sir, the motorcycle lost control</p> <p>15 after exiting the depression that was in</p> <p>16 the road.</p> <p>17 Q. Okay. Did you see the depression</p> <p>18 in the road before the motorcycle hit the</p> <p>19 depression in the road?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Okay. And did you slow down when</p> <p>22 you saw the depression in the road?</p> <p>23 A. Yes, sir.</p> <p>24 Q. Okay. And about how fast were you</p>
<p style="text-align: center;">166</p> <p>1 all over time? Well, let me rephrase the</p> <p>2 question. Has your ability to remember</p> <p>3 what happened in the accident changed at</p> <p>4 all over time?</p> <p>5 A. No, sir. My ability is fine.</p> <p>6 Q. Do you -- do you recall talking to</p> <p>7 a police officer and telling them that you</p> <p>8 had no idea what happened after the</p> <p>9 accident?</p> <p>10 A. Sir, I do not remember that.</p> <p>11 Q. Do you remember speaking to any</p> <p>12 paramedics or emergency personnel and</p> <p>13 telling them that you don't remember what</p> <p>14 happened at the accident?</p> <p>15 A. No, sir. I do not remember telling</p> <p>16 any personnel at the accident.</p> <p>17 Q. Do you remember speaking with any</p> <p>18 doctors and telling them that you had no</p> <p>19 recollection of the accident?</p> <p>20 A. No, sir.</p> <p>21 Q. What do you remember about losing</p> <p>22 control of the motorcycle?</p> <p>23 A. Sir, specific -- I'm asking, in a</p> <p>24 specific context, what are you asking</p>	<p style="text-align: center;">168</p> <p>1 going before you saw the depression in the</p> <p>2 road?</p> <p>3 A. Sir, about the speed limit of 25.</p> <p>4 Q. All right. Do you remember looking</p> <p>5 at your speedometer at the time?</p> <p>6 A. No, sir.</p> <p>7 Q. So it's fair to say that your</p> <p>8 memory that you were going -- when you say</p> <p>9 about 25 -- is just your best estimate at</p> <p>10 this point?</p> <p>11 A. No, sir.</p> <p>12 Q. Okay. Well, what's the basis of</p> <p>13 your statement that you know you were</p> <p>14 going 25 miles an hour?</p> <p>15 MR. CHARNAS: I think he</p> <p>16 said about 25, didn't he? Okay.</p> <p>17 A. Sir, I know that I was going about</p> <p>18 25 based on visual cues. You know roughly</p> <p>19 how fast you're going on a motorcycle by</p> <p>20 look. But if you take your eyes off of</p> <p>21 the road and look at the speedometer it's</p> <p>22 not safe sometimes.</p> <p>23 Q. All right. Do you have any</p> <p>24 training in estimating how fast you're</p>



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<p style="text-align: center;">177</p> <p>1 of the bike?</p> <p>2 A. Yes, sir.</p> <p>3 Q. All right. And can you describe</p> <p>4 that for me?</p> <p>5 A. Yes, sir. The bike -- front tire</p> <p>6 of the bike slid out from underneath me.</p> <p>7 The bike began to topple over toward its</p> <p>8 right side. I felt the bike losing</p> <p>9 control, and I exited the bike in a way</p> <p>10 to make myself safe from getting trapped</p> <p>11 underneath it.</p> <p>12 Q. All right. Now you said the bike</p> <p>13 fell in such a way as to fall on its</p> <p>14 right side. Do you recall when the handle</p> <p>15 bar -- sorry -- do you recall the handle</p> <p>16 bars moving at all on the bike as you</p> <p>17 lost control of it?</p> <p>18 A. No, sir.</p> <p>19 Q. Okay. They remained straight?</p> <p>20 A. Sir, that's an assumption that you</p> <p>21 are making. I don't recall the movement</p> <p>22 of the handle bars in the process.</p> <p>23 Q. Okay. Now, when you say the bike</p> <p>24 fell so that it was landing on its right</p>	<p style="text-align: center;">179</p> <p>1 A. Yes, sir.</p> <p>2 Q. -- is that right?</p> <p>3 Okay. And so you positioned your</p> <p>4 body as you're in the air; is that right?</p> <p>5 A. That's right.</p> <p>6 Q. By the way, did you ever hit the</p> <p>7 ground between the point where you lost</p> <p>8 control of the bike and the time that you</p> <p>9 impacted the guardrail?</p> <p>10 A. Sir, I do not remember hitting the</p> <p>11 ground.</p> <p>12 Q. Okay. Do you have a recollection</p> <p>13 of being in the air the entire time?</p> <p>14 A. Sir, I have a recollection of being</p> <p>15 in the air at the time of the accident.</p> <p>16 Q. Well, when you say "at the time of</p> <p>17 the accident," what do you mean by that?</p> <p>18 A. I remember leaving the motorcycle,</p> <p>19 turning my back to the guardrail and being</p> <p>20 in the air during that process.</p> <p>21 Q. Okay. And at some point did you</p> <p>22 hit the guardrail?</p> <p>23 A. Yes, sir.</p> <p>24 Q. And do you recall hitting the</p>
<p style="text-align: center;">178</p> <p>1 side, would -- was the back tire coming</p> <p>2 around to your right or around to your</p> <p>3 left side?</p> <p>4 MR. CHARNAS: Objection.</p> <p>5 A. Sir, the back tire was not coming</p> <p>6 around in a direction --</p> <p>7 Q. Okay.</p> <p>8 A. -- that I remember.</p> <p>9 Q. So the bike just fell towards your</p> <p>10 right side; is that correct?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Okay. And as that happened, you've</p> <p>13 explained how you tried to position your</p> <p>14 body, but I'm not sure I understood it.</p> <p>15 If you could explain it to me again.</p> <p>16 A. Sir, I saw the encroaching</p> <p>17 guardrail, and I pushed off with my feet</p> <p>18 and turned my back to the guardrail for</p> <p>19 safety --</p> <p>20 Q. Okay.</p> <p>21 A. -- and used the guardrail to guide</p> <p>22 me.</p> <p>23 Q. And as you came off the bike, you</p> <p>24 were coming head first --</p>	<p style="text-align: center;">180</p> <p>1 guardrail?</p> <p>2 A. Sir, my eyes were in the opposite</p> <p>3 plane from hitting the guardrail, but the</p> <p>4 path that I was on and the aim point that</p> <p>5 I had picked as a best-faith estimate, I</p> <p>6 can say that I hit the guardrail that was</p> <p>7 in my line of path -- in my line of</p> <p>8 travel. But --</p> <p>9 Q. And what was -- go ahead.</p> <p>10 A. I answered already.</p> <p>11 Q. Okay.</p> <p>12 A. Sorry.</p> <p>13 Q. What was the first part of your</p> <p>14 body that hit the guardrail?</p> <p>15 A. Sir, the first part of the</p> <p>16 guardrail that I hit -- my body, that I</p> <p>17 remember, there might've been a minor</p> <p>18 change, maybe the back of my heel hit, I</p> <p>19 have no idea what the first point is --</p> <p>20 what the first point that I remember</p> <p>21 hitting was my back.</p> <p>22 Q. Okay. About where on your back?</p> <p>23 A. Sir, I do not recall.</p> <p>24 Q. Okay. Go ahead.</p>



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<p style="text-align: center;">193</p> <p>1 Q. Do you recall?</p> <p>2 A. I do not recall.</p> <p>3 Q. Okay. You said you hit a</p> <p>4 depression in the roadway on Hartwell</p> <p>5 Road.</p> <p>6 A. Yes, sir.</p> <p>7 Q. Okay. Can you describe what that</p> <p>8 depression -- what you recall about that</p> <p>9 depression?</p> <p>10 A. Yes, sir. The depression that was</p> <p>11 in the roadway was surrounding a manhole</p> <p>12 cover, and it was in the lane leaving</p> <p>13 Independence Court along Hartwell Road.</p> <p>14 And I have driven past that very pothole,</p> <p>15 ran past it while jogging and ridden my</p> <p>16 bicycle fast many times, and from what I</p> <p>17 recall of that pothole, I remember always</p> <p>18 consciously and subconsciously thinking</p> <p>19 that it was a dangerous situation. And it</p> <p>20 went down several inches into the roadway,</p> <p>21 unlike many of the other manhole covers</p> <p>22 that I had encountered anywhere else in</p> <p>23 the country.</p> <p>24 Q. And do you remember, from what you</p>	<p style="text-align: center;">195</p> <p>1 A. Yes, sir.</p> <p>2 Q. And do you remember consciously</p> <p>3 avoiding the manhole with your motorcycle?</p> <p>4 A. Yes, sir.</p> <p>5 Q. By the way, what's the speed limit</p> <p>6 on Hartwell Road?</p> <p>7 A. Sir, it's 25.</p> <p>8 Q. After you hit the telephone pole --</p> <p>9 well, you said the first part of your body</p> <p>10 was your head that hit the telephone pole.</p> <p>11 What's the next thing you remember?</p> <p>12 A. Sir, that question was asked in a</p> <p>13 different context and the same answer --</p> <p>14 Q. Okay.</p> <p>15 A. -- is that the next thing I</p> <p>16 remember after contacting the telephone</p> <p>17 pole was waking up in the hospital.</p> <p>18 Q. Okay. So you don't remember any</p> <p>19 time -- you don't remember landing on the</p> <p>20 ground after you hit the telephone pole?</p> <p>21 A. Correct.</p> <p>22 Q. Okay. Okay. Do you remember</p> <p>23 having any pain when you hit the telephone</p> <p>24 pole?</p>
<p style="text-align: center;">194</p> <p>1 had seen, about how many inches it went</p> <p>2 down?</p> <p>3 A. Sir, I can only give a best-faith</p> <p>4 estimate of about three inches.</p> <p>5 Q. So on the day of January 4th, 2002,</p> <p>6 you were aware that there was an</p> <p>7 unusually-dangerous manhole on Hartwell</p> <p>8 Road?</p> <p>9 A. Yes, sir.</p> <p>10 Q. And you had seen it many times</p> <p>11 before?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Okay. Had you ever driven over it</p> <p>14 on your motorcycle before?</p> <p>15 A. No, sir.</p> <p>16 Q. How about with your pickup truck?</p> <p>17 Let me ask you a different question. Do</p> <p>18 you ever recall driving in your pickup</p> <p>19 truck and hitting the depression with one</p> <p>20 of the tires of the pickup truck?</p> <p>21 A. No, sir.</p> <p>22 Q. Okay. Do you remember consciously</p> <p>23 avoiding the manhole cover with your</p> <p>24 pickup truck?</p>	<p style="text-align: center;">196</p> <p>1 A. Sir, I do not remember.</p> <p>2 Q. Okay.</p> <p>3 MR. CHARNAS: Off the</p> <p>4 record.</p> <p>5 (Off the record at 2:08</p> <p>6 p.m.)</p> <p>7 (Discussion off the record).</p> <p>8 (Back on the record at 2:09</p> <p>9 p.m.)</p> <p>10 BY MR. LEWIN:</p> <p>11 Q. What's the first thing you remember</p> <p>12 when you woke up in the hospital?</p> <p>13 A. Looking at the ceiling tiles.</p> <p>14 Q. Did you know where you were?</p> <p>15 A. No, sir. I had no clue.</p> <p>16 Q. Did you know what had happened?</p> <p>17 A. No, sir.</p> <p>18 Q. Did you have any idea what was</p> <p>19 going on?</p> <p>20 A. No, sir.</p> <p>21 Q. Okay. Who was the first person</p> <p>22 that you saw?</p> <p>23 A. Sir, looking back, I actually don't</p> <p>24 remember now --</p>



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Ian James Brown

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<p style="text-align: center;">297</p> <p>1 started, when I started recognizing people</p> <p>2 and engaging in conversation, I -- I think</p> <p>3 my memory was okay at that point. It was</p> <p>4 better than, you know, when I was of</p> <p>5 heavily, heavily medicated.</p> <p>6 Q. I want to go back to the day of</p> <p>7 the accident.</p> <p>8 A. Yes, sir.</p> <p>9 Q. Actually, let me go back to your</p> <p>10 motorcycle.</p> <p>11 You purchased the motorcycle in New</p> <p>12 Jersey?</p> <p>13 A. Yes, sir.</p> <p>14 Q. It was new when you purchased it?</p> <p>15 A. Brand new, sir.</p> <p>16 Q. Do you recall what you paid for it?</p> <p>17 A. No, sir. The bill of sale shows,</p> <p>18 which we have record of.</p> <p>19 Q. Okay. Now, when you -- in your</p> <p>20 answers to interrogatories, you indicated</p> <p>21 that certain work was done to it. For</p> <p>22 example, date of purchase in your answers</p> <p>23 to interrogatories is July 6th of 2001?</p> <p>24 MR. CHARNAS: Excuse me,</p>	<p style="text-align: center;">299</p> <p>1 Q. Now, it says on July -- above that</p> <p>2 on Section E it says "on July 6th, 2001</p> <p>3 the fender kit and blinker kit were</p> <p>4 installed."</p> <p>5 A. (Witness viewing document). Yes,</p> <p>6 sir.</p> <p>7 Q. That was like some additional</p> <p>8 optional equipment that you had put out</p> <p>9 there?</p> <p>10 A. Sir, I think that was just</p> <p>11 something from the dealership that they</p> <p>12 installed.</p> <p>13 Q. And on September 24th, 2001 you had</p> <p>14 a fuel tank, tail cover and seat cover and</p> <p>15 fuel tank cap installed for. Do you see</p> <p>16 that?</p> <p>17 A. (Witness viewing document). Yes,</p> <p>18 sir.</p> <p>19 Q. What was the reason for having that</p> <p>20 done?</p> <p>21 A. Sir, the motorcycle had scratches</p> <p>22 on the tank, my brand new tank, and I do</p> <p>23 not recall at the exact reasoning that it</p> <p>24 was done, but I think there was an</p>
<p style="text-align: center;">298</p> <p>1 Mike, which set are you referring to?</p> <p>2 MR. CALLAHAN: I'm sorry.</p> <p>3 I'm looking at Plaintiff Ian Brown's</p> <p>4 Answers to Boston Edison's First Set of</p> <p>5 Interrogatories.</p> <p>6 MR. CHARNAS: Which number?</p> <p>7 MR. CALLAHAN: Number 6.</p> <p>8 MR. CHARNAS: Go ahead.</p> <p>9 I'm sorry.</p> <p>10 A. (Witness viewing document).</p> <p>11 Q. And if you look at Answer 6 F, it</p> <p>12 indicates that you purchased the motorcycle</p> <p>13 on July 6th of 2001?</p> <p>14 A. (Witness viewing document). Yes,</p> <p>15 sir.</p> <p>16 Q. Does that refresh your recollection</p> <p>17 as to when you purchased the motorcycle?</p> <p>18 A. Sir, I would have to check the bill</p> <p>19 of sale.</p> <p>20 Q. Okay that --</p> <p>21 A. Sounds --</p> <p>22 Q. It sounds about right?</p> <p>23 A. It could -- yeah. It could be</p> <p>24 pretty close.</p>	<p style="text-align: center;">300</p> <p>1 insurance issue. I think insurance had</p> <p>2 paid for them to replace that.</p> <p>3 Q. Do you know how those scratches</p> <p>4 came to be on the fuel tank?</p> <p>5 A. Sir, I do not know. I think that</p> <p>6 it was an insurance thing and maybe</p> <p>7 vandalism or wind or something. I would</p> <p>8 have to check with insurance why they --</p> <p>9 why they put that claim through.</p> <p>10 Q. Well, when you purchased the</p> <p>11 motorcycle on July 6th or July of 2001,</p> <p>12 did -- were those scratches it?</p> <p>13 A. No, sir.</p> <p>14 Q. So something happened while you</p> <p>15 owned the vehicle?</p> <p>16 A. No, sir.</p> <p>17 Q. While you opened the motorcycle?</p> <p>18 A. No, sir. I would have to check.</p> <p>19 But I think that something happened while</p> <p>20 I was -- actually had the motorcycle</p> <p>21 actually stationary or parked.</p> <p>22 Q. Well, after you had purchased it?</p> <p>23 A. Correct.</p> <p>24 Q. Okay. And so did you -- you</p>



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Ian James Brown

July 7, 2006

<p style="text-align: center;">329</p> <p>1 see the clearance. I'm sorry. I don't</p> <p>2 mean to be rude in any means, I just</p> <p>3 don't -- I don't know.</p> <p>4 Q. You're an experienced motorcycle</p> <p>5 rider. You've ridden for a while --</p> <p>6 A. Yes, sir.</p> <p>7 Q. -- you have to tell me -- you have</p> <p>8 to have some idea what your position was</p> <p>9 as you rode over the depression?</p> <p>10 A. Sir, a few inches, but I've never</p> <p>11 looked at myself while riding a</p> <p>12 motorcycle.</p> <p>13 Q. Okay.</p> <p>14 A. As a best-faith estimate, my hips</p> <p>15 were a couple of inches off.</p> <p>16 Q. Fair enough, you weren't standing</p> <p>17 straight up --</p> <p>18 A. No, sir.</p> <p>19 Q. -- on the motorcycle?</p> <p>20 A. No, sir.</p> <p>21 Q. Okay. As you went over the road</p> <p>22 depression and you were -- I don't know</p> <p>23 how to describe your position -- but kind</p> <p>24 of --</p>	<p style="text-align: center;">331</p> <p>1 lose your balance, per se. And the way I</p> <p>2 am explaining it, I'm trying to draw a</p> <p>3 parallel in saying that you can feel when</p> <p>4 you're no longer on your -- the right</p> <p>5 center like. You can feel when you're</p> <p>6 about to lose your balance and slip, just</p> <p>7 as when you're walking. If you're sitting</p> <p>8 up and you're about to fall over, you feel</p> <p>9 that center of gravity shift. And I felt</p> <p>10 the bike was losing control by a</p> <p>11 gravitational feel and a positional feel.</p> <p>12 I felt that the bike was about to fall.</p> <p>13 Q. Okay. Would you equate that with</p> <p>14 saying that you were losing control of the</p> <p>15 -- of the motorcycle?</p> <p>16 A. Sir, I'm not quite sure I</p> <p>17 understand the manner in your asking.</p> <p>18 Q. Okay. Well, you were riding the</p> <p>19 motorcycle, and as the operator you have</p> <p>20 full control over where the motorcycle</p> <p>21 goes --</p> <p>22 A. Right.</p> <p>23 Q. -- what you do with it. Now, as</p> <p>24 you hit the depression, at some point in</p>
<p style="text-align: center;">330</p> <p>1 A. Standing on the pegs.</p> <p>2 Q. -- standing on the pegs, what</p> <p>3 happened next in terms of your physical</p> <p>4 position on the motorcycle or to the</p> <p>5 motorcycle itself?</p> <p>6 A. Can you repeat the question, I</p> <p>7 wanted to find out at what point you're</p> <p>8 referring to? The --</p> <p>9 Q. As you're going over -- as your</p> <p>10 rear tire was going over the --</p> <p>11 A. Yes.</p> <p>12 Q. -- road depression, what happened</p> <p>13 next to either you, in terms of your</p> <p>14 physical positioning on the motorcycle, or</p> <p>15 to the motorcycle itself?</p> <p>16 A. I felt the motorcycle lose control</p> <p>17 and began to react because I know that</p> <p>18 there was no easy correction I could've</p> <p>19 made to rectify it.</p> <p>20 Q. Okay. Now, you've used that phrase</p> <p>21 several times in terms of the motorcycle</p> <p>22 losing control. What do you mean by that?</p> <p>23 A. Sir, when you walk, you feel a</p> <p>24 point at which you're about to fall if you</p>	<p style="text-align: center;">332</p> <p>1 time you lost control of your ability to</p> <p>2 maneuver and operate the motorcycle; is</p> <p>3 that correct?</p> <p>4 A. Yes, sir. I no longer control.</p> <p>5 Q. All right. And what part of your</p> <p>6 body either came off the motorcycle first</p> <p>7 or -- what did you do? Did you lose your</p> <p>8 grip on the handle bars?</p> <p>9 A. No, sir.</p> <p>10 Q. Did you lose your feet?</p> <p>11 A. What I did was I pushed off with</p> <p>12 my feet first. I used my hands on the</p> <p>13 bike as balance as the bike was going down</p> <p>14 and used the bike as a reference -- as a</p> <p>15 center of gravity to push off of as it</p> <p>16 was tucking.</p> <p>17 Q. Okay.</p> <p>18 A. And --</p> <p>19 MR. CHARNAS: Did you finish</p> <p>20 your answer?</p> <p>21 BY MR. CALLAHAN:</p> <p>22 Q. I'm sorry. Go ahead.</p> <p>23 A. No, sir.</p> <p>24 -- and I began to use my feet to</p>



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<p style="text-align: center;">333</p> <p>1 push off to get those clear so that my</p> <p>2 legs were not trapped underneath. And I</p> <p>3 began to turn my shoulders in a manner to</p> <p>4 start protecting myself from the</p> <p>5 encroaching guardrail.</p> <p>6 Q. How far had the motorcycle traveled</p> <p>7 past the road depression when you made the</p> <p>8 decision to push off the motorcycle?</p> <p>9 A. Sir, that I have no idea, because I</p> <p>10 was not looking behind from where the</p> <p>11 manhole cover was to where I was when I</p> <p>12 pushed off. I simply felt that the bike</p> <p>13 was going down and knew I had only a few</p> <p>14 split seconds to keep myself safe. I</p> <p>15 didn't look to see how far that was.</p> <p>16 Q. Where were you looking?</p> <p>17 A. I was looking for an aim point.</p> <p>18 Basically, something that -- any time you</p> <p>19 have a parachute accident or any accident,</p> <p>20 you look for, you know, your safest</p> <p>21 option, and I was looking for a place to</p> <p>22 turn so that I could slide in a safe</p> <p>23 manner as possible.</p> <p>24 Q. When you say -- I'm sorry. When</p>	<p style="text-align: center;">335</p> <p>1 path of travel so that the bike didn't</p> <p>2 come over top of my, per se, or the gas</p> <p>3 tank opening up.</p> <p>4 But I wanted to pick a point where</p> <p>5 I was gonna be safe from the roadway and</p> <p>6 from all the other conditions. So I</p> <p>7 picked a shallow angle at something that I</p> <p>8 would just glide along.</p> <p>9 Q. Did all those thoughts go through</p> <p>10 your mind during this incident in terms of</p> <p>11 picking an aim point, wanting to make sure</p> <p>12 that the bike didn't roll over you,</p> <p>13 concern about the gas tank, did all of</p> <p>14 those thoughts go through your mind during</p> <p>15 the accident?</p> <p>16 A. Sir, I would not say all of the</p> <p>17 specifics are things I focused on. But in</p> <p>18 all my time in training in parachuting and</p> <p>19 such, you know so much of what's going on</p> <p>20 around you in such a short amount of time,</p> <p>21 it's what you train -- you spend your</p> <p>22 entire life focusing on maximizing those</p> <p>23 seconds that you're in free fall, your</p> <p>24 body position and these things, so that's</p>
<p style="text-align: center;">334</p> <p>1 you say an "aim point," what do you mean</p> <p>2 by that?</p> <p>3 A. If you eject out of an aircraft,</p> <p>4 you don't want it to just crash over a</p> <p>5 neighborhood, so you try to aim the</p> <p>6 aircraft at something it's going to do the</p> <p>7 least impact. I tried to aim my body at</p> <p>8 something that does the least damage to</p> <p>9 me.</p> <p>10 Q. And what did you aim your body at?</p> <p>11 A. At the guardrail.</p> <p>12 Q. You had a full kevlar suit on,</p> <p>13 correct?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Okay. Did you make a choice not</p> <p>16 to go down with the bike and slide along</p> <p>17 the ground?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Okay. And why is that?</p> <p>20 A. It looked much safer to avoid the</p> <p>21 bike, to get away from it. There are</p> <p>22 many things that could happen potentially,</p> <p>23 but I wanted to make some distance and</p> <p>24 change my path of travel from the bike's</p>	<p style="text-align: center;">336</p> <p>1 -- reverting back to my training after 805</p> <p>2 parachute jumps and orienting my body in</p> <p>3 space and doing these things and avoiding</p> <p>4 injury by picking aim points and stuff,</p> <p>5 these were all things that are just</p> <p>6 instinct to me. So they're thoughts that</p> <p>7 are going through my head as I'm</p> <p>8 performing them in a quick and efficient</p> <p>9 manner.</p> <p>10 Q. So the aim point that you're</p> <p>11 referring to, is an aim point that you're</p> <p>12 going to aim your body at in order to try</p> <p>13 to minimize risk to you?</p> <p>14 A. Yes, sir.</p> <p>15 Q. It's not an aim point that you</p> <p>16 would direct the motorcycle towards?</p> <p>17 A. Oh, no, sir.</p> <p>18 Q. When you were picking that aim</p> <p>19 point, I take it you saw the guardrail?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Did you see the telephone or</p> <p>22 utility pole? . . .</p> <p>23 A. No, sir.</p> <p>24 Q. How far were you from the guardrail</p>



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Condensed Transcript

UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

IAN J. BROWN, JAMES BROWN
AND BARBARA BROWN,

Plaintiffs,

VS.

CIVIL ACTION NUMBER:
04-11924-RGS

UNITED STATES OF AMERICA,
VERIZON NEW ENGLAND, INC., and
BOSTON EDISON COMPANY
d/b/a NSTAR ELECTRIC,

Defendants.

DEPOSITION OF

IAN JAMES BROWN

VOLUME II

July 14, 2006
9:14 a.m.

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Ian James Brown - Volume II

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<p style="text-align: center;">371</p> <p>1 I -- My body and my head were pointed and 2 oriented in the direction of travel. So if 3 I were going down the roadway on the 4 motorcycle, when I pushed off, my head -- 5 I was traveling down the road head first 6 in the direction that the motorcycle was 7 traveling, in a general sense. But 8 whether or not whether the motorcycle went 9 one direction and I went another, you 10 know, would not be the exact same 11 direction, but I was going head first down 12 the roadway. 13 Q. And the road, after the manhole 14 where the depression was, does Hartwell 15 Road kind of incline and curve to the 16 left? 17 A. Yes, sir. 18 Q. Do you have a -- You testified that 19 you were not heading at the guardrail on 20 what I would kind of call a 90-degree 21 angle, straight toward the guardrail. Do 22 you have a memory as to what angle you 23 were traveling toward the guardrail? 24 A. Sir, the best faith estimate, as I</p>	<p style="text-align: center;">373</p> <p>1 understand that to mean the angle between 2 the guardrail and your body as it 3 approached the guardrail? 4 A. Correct, sir. 5 Q. Do you recall what was on the other 6 side of the guardrail? 7 A. Sir, can I have the question 8 clarified? 9 Q. Sure. Let me re-ask it. Do you 10 have a memory of whether or not there was 11 anything in the ten to fifteen feet area 12 beyond the guardrail? 13 A. Sir, I used to drive by that every 14 day, walk by it, bicycle passed it, as I 15 mentioned earlier. And knowing that I 16 knew there were trees there at the time. 17 But at the time of the accident my eyes 18 were averted away from the guardrail. So 19 I did not see what exact obstructions were 20 on the ten to fifteen feet on the side of 21 the guardrail in the stretch of roadway 22 that I was on. 23 Q. Do you recall how many feet -- 24 Strike that. At the location where you --</p>
<p style="text-align: center;">372</p> <p>1 stated earlier, it was a shallow angle. I 2 mean, it was certainly not orthogonal as 3 you mentioned. I don't know what that 4 angle was. But I know that it was it was 5 shallow enough that it did not seem to be 6 -- That I would anticipate a very strong 7 impact. It looked like I was going to 8 glance along the side of it. 9 MR. CALLAHAN: Off the 10 record for a minute. 11 (Discussion off the record). 12 BY MR. CALLAHAN: 13 Q. You testified it was a shallow 14 angle and can you give me any better 15 understanding as to what angle you were 16 heading toward the guardrail? 17 A. Sir, as a best faith estimate, I 18 can only say that it was less than 45 19 from my perception. But again, my eyes 20 were averted away from the guardrail at 21 the time of impact. I would anticipate 22 that it was decreasing but I cannot say 23 for sure. 24 Q. When you say "less than 45," do I</p>	<p style="text-align: center;">374</p> <p>1 Your body came into contact with the 2 guardrail, do you recall how many feet 3 that was from the utility pole along 4 Hartwell Road that you believe you struck? 5 A. No, sir, I do not recall. 6 Q. Do you know if it was -- Do you 7 recall whether it was more than ten feet 8 from the utility pole? 9 A. No, sir, I do not recall. 10 Q. Do you know if it was more than 20 11 feet from the utility pole? 12 A. Sir, I do not recall. 13 Q. I believe you testified earlier 14 that when you picked the aim point you did 15 not see the utility pole; is that right? 16 A. Yes, sir. 17 Q. Do you have a memory as to -- 18 Strike that. When you came into contact 19 with the guardrail, did the direction in 20 which your body was traveling change or 21 was it affected by the guardrail? 22 MR. CHARNAS: I'm sorry, 23 could we have that question read back, 24 please?</p>



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Ian James Brown - Volume II

July 14, 2006

<p style="text-align: center;">375</p> <p>1 (Question read).</p> <p>2 BY MR. CALLAHAN:</p> <p>3 Q. Let me rephrase that, it's not a</p> <p>4 real good question. You testified that you</p> <p>5 believe your body was traveling at a less,</p> <p>6 you know, less than 45-degree angle toward</p> <p>7 the guardrail. What I'm trying to find</p> <p>8 out is was the direction of your the --</p> <p>9 Was the direction of the your body</p> <p>10 redirected in any manner by the guardrail?</p> <p>11 A. Yes, sir. I did not go through</p> <p>12 the steel of the guardrail. I was averted</p> <p>13 because of the guardrail.</p> <p>14 Q. Do you have an understanding as to</p> <p>15 whether or not -- Strike that. If the</p> <p>16 guardrail had not been at that location,</p> <p>17 would your body have then continued into</p> <p>18 the area on the other side of the</p> <p>19 guardrail where the woods and trees are?</p> <p>20 MR. CHARNAS: Are you</p> <p>21 assuming that he made the same maneuver</p> <p>22 he's described to try to aim for the</p> <p>23 guardrail?</p> <p>24 MR. CALLAHAN: Yes.</p>	<p style="text-align: center;">377</p> <p>1 say what would have happened if he'd aimed</p> <p>2 for the guardrail but the guardrail wasn't</p> <p>3 there. On that ground I object. You can</p> <p>4 answer if you can.</p> <p>5 A. Sir, going back to my previous</p> <p>6 statement, it's difficult to say on those</p> <p>7 -- Given those circumstances mainly for</p> <p>8 part of the reason that Scott mentioned.</p> <p>9 And what I can say is if my body had been</p> <p>10 traveling in the direction it was because</p> <p>11 of the choice that I had made, if the</p> <p>12 guardrail was not there, it is possible</p> <p>13 that I would have just passed into the --</p> <p>14 What we're calling as the brush in your</p> <p>15 scenario on the side of the road.</p> <p>16 Q. Okay. And I think you test -- And</p> <p>17 just so I understand your testimony, is</p> <p>18 that you were approaching -- Your body was</p> <p>19 approaching the guardrail about a less</p> <p>20 than 45-degree angle, based on your best</p> <p>21 faith estimate. And is it your testimony</p> <p>22 that the guardrail redirected the way in</p> <p>23 which your body was traveling into the</p> <p>24 utility pole?</p>
<p style="text-align: center;">376</p> <p>1 A. Sir, trying to estimate what would</p> <p>2 happen in a -- In potentially different</p> <p>3 scenarios with different circumstances</p> <p>4 would be a vague estimate at best. I</p> <p>5 would think that given that situation I</p> <p>6 may have reacted differently. And I'm not</p> <p>7 quite sure, given the loose parameters of</p> <p>8 the scenario; it's difficult to say.</p> <p>9 Q. I don't want to you speculate at</p> <p>10 all. What I'm asking you to do is:</p> <p>11 Taking the same conditions and the day of</p> <p>12 your accident that you pushed off the your</p> <p>13 motorcycle in the same direction, if the</p> <p>14 guardrail was not in that location, would</p> <p>15 your body have then continued on to the</p> <p>16 side of the road and into that wooded</p> <p>17 area?</p> <p>18 MR. CHARNAS: I'm sorry, I</p> <p>19 have to ask to read that back. (Question</p> <p>20 read).</p> <p>21 MR. CHARNAS: I have to</p> <p>22 object on the ground that he's testified</p> <p>23 that he did what he did because he aimed</p> <p>24 for the guardrail. So you're asking to</p>	<p style="text-align: center;">378</p> <p>1 A. Yes, sir.</p> <p>2 Q. Can you tell me how your body was</p> <p>3 redirected?</p> <p>4 A. Sir, because I was approaching the</p> <p>5 guardrail at an angle and now traveled in</p> <p>6 the direct path of the guardrail, the</p> <p>7 guardrail decided my path from that point</p> <p>8 on. Not myself and not the direction of</p> <p>9 travel, which I left the motorcycle. So</p> <p>10 what the guardrail did was change the</p> <p>11 angle of my body movement and beyond that</p> <p>12 I would only imagine that the experts</p> <p>13 could best put that together.</p> <p>14 Q. And, not trying to put words in</p> <p>15 your mouth, just trying to get</p> <p>16 understanding of what I think you're</p> <p>17 saying. Is it fair to say that your body</p> <p>18 was traveling (Interruption).</p> <p>19 BY MR. CALLAHAN:</p> <p>20 Q. -- At a, as you described, a less</p> <p>21 than 45-degree angle toward the guardrail,</p> <p>22 and then when it came in contact with the</p> <p>23 guardrail its -- Your body was then</p> <p>24 redirected kind of forward toward the</p>



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<p style="text-align: center;">379</p> <p>1 utility pole?</p> <p>2 MR. CHARNAS: I'm going to</p> <p>3 object it was asked and answered. But go</p> <p>4 ahead and answer it again if you want.</p> <p>5 A. Sir, my what I am saying is that</p> <p>6 the guardrail changed the path along which</p> <p>7 I was traveling. I contacted the</p> <p>8 guardrail and was then traveling along the</p> <p>9 path of the guardrail. The guardrail</p> <p>10 changed my path, my body's motion, so that</p> <p>11 the guardrail now dictated how my body was</p> <p>12 moving and not the general physics of the</p> <p>13 situation.</p> <p>14 Q. I think we're saying the same thing</p> <p>15 but I'm just --</p> <p>16 A. I think so too. I don't mean to</p> <p>17 get too technical and too vague.</p> <p>18 Q. I understand. Would it be fair to</p> <p>19 say that your body direction was not a</p> <p>20 straight line from where you exited --</p> <p>21 Exited the motorcycle directly to the</p> <p>22 utility pole?</p> <p>23 A. Correct, sir.</p> <p>24 MR. CHARNAS: Wait, when you</p>	<p style="text-align: center;">381</p> <p>1 understanding that the direction of your</p> <p>2 body did not travel along the straight</p> <p>3 line from point A to point B as I've just</p> <p>4 described them; is that correct?</p> <p>5 A. Sir, that is 100 percent accurate.</p> <p>6 My body was not -- The path of my body</p> <p>7 was not on the line that you have drawn.</p> <p>8 Q. Using the same kind of basic math,</p> <p>9 if we -- If we describe the point on the</p> <p>10 guardrail as being point A, let's say the</p> <p>11 point of your motorcycle, where you left</p> <p>12 the motorcycle is point A, the point where</p> <p>13 you came into contact with the guardrail</p> <p>14 as being point B and the utility pole as</p> <p>15 being point C, your body traveled from</p> <p>16 point A to point B, and then from point B</p> <p>17 to point C; is that accurate?</p> <p>18 A. Sir, can we get a chalkboard?</p> <p>19 Q. I can give you a piece of paper if</p> <p>20 you --</p> <p>21 A. I think I understand the question</p> <p>22 being that point A is where I left the</p> <p>23 motorcycle, point C is the guardrail,</p> <p>24 point B is the telephone pole and you're</p>
<p style="text-align: center;">380</p> <p>1 say, "a straight line" you mean a</p> <p>2 perpendicular line?</p> <p>3 MR. LEWIN: Straight line.</p> <p>4 MR. CALLAHAN: A straight</p> <p>5 line, perpendicular anticipates another</p> <p>6 line.</p> <p>7 MR. CHARNAS: Could we go</p> <p>8 off the record for a second?</p> <p>9 (Discussion off the record).</p> <p>10 BY MR. CALLAHAN:</p> <p>11 Q. Just so we're clear, my prior</p> <p>12 question was -- Was related -- Strike</p> <p>13 that. Just so we're clear, what I was</p> <p>14 trying to get at with my prior question</p> <p>15 was I wanted to -- If you think about a</p> <p>16 straight line you think about a line</p> <p>17 directly from one point to another point;</p> <p>18 do you understand that?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Okay. And what I was asking you</p> <p>21 was if you -- If you take the first point</p> <p>22 A as being the point at which you pushed</p> <p>23 off the motorcycle and point B being the</p> <p>24 location of the utility pole, it's my</p>	<p style="text-align: center;">382</p> <p>1 asking if --</p> <p>2 Q. No, I changed them up a little bit.</p> <p>3 That's probably what confused you. Point</p> <p>4 A being your position on the motorcycle at</p> <p>5 the time you pushed off, B being the point</p> <p>6 on where your body came into contact with</p> <p>7 the guardrail, and C being the location of</p> <p>8 the utility pole. So is it fair to say</p> <p>9 that your body traveled from point A to B</p> <p>10 and then from B to C?</p> <p>11 A. Sir, are we talking straight lines</p> <p>12 only?</p> <p>13 Q. For the purposes of this question,</p> <p>14 yes.</p> <p>15 A. No, sir.</p> <p>16 Q. Okay. Can you describe for me what</p> <p>17 wouldn't be a straight line along those</p> <p>18 points?</p> <p>19 A. Sir, because of wind friction and</p> <p>20 the laws of physics that are well beyond</p> <p>21 me I can only estimate that my body had</p> <p>22 some sort of, like, deceleration or some</p> <p>23 external force that may not have been 100</p> <p>24 percent straight line. I don't think that</p>



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<p style="text-align: center;">511</p> <p>1 Q. And when is that or how often is</p> <p>2 that?</p> <p>3 A. Sir, mornings and nights. It</p> <p>4 varies based on what my class schedule is.</p> <p>5 Some nights I have late class, some nights</p> <p>6 my father works nights, some of the nights</p> <p>7 my mom's at choir and I'm sure they'll get</p> <p>8 into all the specifics of that. But the --</p> <p>9 Basically the times that we're home are</p> <p>10 the times that, you know, my parents help</p> <p>11 me out. And to clarify earlier when I</p> <p>12 say, "ships passing in the night," I don't</p> <p>13 get to see my parents as much as I would</p> <p>14 like to and I'm sure we'd all like more</p> <p>15 time in the day.</p> <p>16 Q. Could you give me some</p> <p>17 approximation of about how many hours per</p> <p>18 day you would say you are home at the</p> <p>19 same time as one of your parents?</p> <p>20 A. Sir, including sleeping?</p> <p>21 Q. No, not including sleeping.</p> <p>22 A. Okay. Sir, as a best faith</p> <p>23 estimate I would say five hours. But when</p> <p>24 all three of us are there at the same</p>	<p style="text-align: center;">513</p> <p>1 see an object approaching you.</p> <p>2 Q. Well, let's start with your</p> <p>3 peripheral vision. What do you remember</p> <p>4 sitting here today on what you base your</p> <p>5 25 mile an hour estimate? What do you</p> <p>6 remember sitting here today that was in</p> <p>7 your peripheral vision that you base that</p> <p>8 estimate on?</p> <p>9 A. Sir, I would imagine same things</p> <p>10 that you would see driving anywhere on</p> <p>11 earth. Your visual perception in your</p> <p>12 peripheral vision is relative which are</p> <p>13 not focusing on it so you don't see like</p> <p>14 minor details. You just see movement and</p> <p>15 the passing of objects. So I could only,</p> <p>16 as a best faith estimate, say that knowing</p> <p>17 the road I was on and the area, I more</p> <p>18 than likely saw in my peripheral vision</p> <p>19 the houses off to the left, per se, and</p> <p>20 possibly the shrubs and such on the right</p> <p>21 side in my peripheral. But again that's</p> <p>22 only a best faith estimate as what I would</p> <p>23 likely see in my peripheral vision as</p> <p>24 driving down that road.</p>
<p style="text-align: center;">512</p> <p>1 time that gets to be a little less.</p> <p>2 Q. Mr. Wilnot asked you some questions</p> <p>3 about how you come up with your best faith</p> <p>4 estimate of -- Do you need a break?</p> <p>5 A. No, sir.</p> <p>6 Q. Okay. Mr. Wilnot asked you some</p> <p>7 questions about how you came up with your</p> <p>8 best faith estimate that you were</p> <p>9 traveling about 25 miles an hour at the</p> <p>10 time of your accident. And one of your</p> <p>11 answers was that you base that on the</p> <p>12 visual cues that you had at the time.</p> <p>13 And I guess my question is: What visual</p> <p>14 cues are you basing your estimate that you</p> <p>15 were going 25 miles an hour? Let me</p> <p>16 rephrase the question. On what visual cues</p> <p>17 do you base your best faith estimate that</p> <p>18 you were going 25 miles an hour at the</p> <p>19 time of your accident?</p> <p>20 A. Sir, peripheral vision, objects you</p> <p>21 see passing and the -- As a rough estimate</p> <p>22 of objects you see in front of you that</p> <p>23 are approaching you, closing speeds, I</p> <p>24 guess, we would call off line is when you</p>	<p style="text-align: center;">514</p> <p>1 Q. I'm not asking for what you might</p> <p>2 or likely would see. You've testified</p> <p>3 that sitting here today your -- Your best</p> <p>4 faith estimate is that you were traveling</p> <p>5 25 miles an hour. And you've testified</p> <p>6 that you didn't look at the speedometer</p> <p>7 and that you, today, come up with that</p> <p>8 estimate based on certain visual cues.</p> <p>9 And now you've told me that one of those</p> <p>10 visual cues is what you saw through your</p> <p>11 peripheral vision. And so what, I guess,</p> <p>12 I'm asking you is: Sitting here today,</p> <p>13 what was it in your peripheral vision that</p> <p>14 you remember seeing that on which you</p> <p>15 arrive at a 25 mile an hour estimate?</p> <p>16 MR. CHARNAS: Objection.</p> <p>17 A. Okay. Sir --</p> <p>18 Q. Do you understand the question?</p> <p>19 A. I do. The peripheral vision is one</p> <p>20 of the things you use as visual cues when</p> <p>21 you're estimating speed. I remember</p> <p>22 seeing the roadway as I was driving on it</p> <p>23 in my direct vision and also in my</p> <p>24 peripheral vision so I could see the</p>



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